

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed September 23, 2008. Claims 1-18 and 20-45 were pending and rejected in view of cited art.<sup>1</sup> Claims 1, 7, 9, 15, 23, 28, 32, 38, 41, and 43 are amended. Claims 1-18 and 20-45 are now pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. EXAMINER'S INTERVIEW**

Applicant's express their appreciation to the Examiner for conducting an interview with Applicant's representative on January 13, 2009. The substance of the interview is included in this response.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Support for the claim amendments and/or new claims can be found throughout the specification and drawings as originally filed.

**C. PRIOR ART REJECTIONS**

**I. REJECTION UNDER 35 U.S.C. §102(E)**

The Office Action rejected claims 1-18 and 20-37 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,036,699 (*Andreas*). Applicant traverses the Examiner's rejection for anticipation on the grounds that *Andreas* does not disclose each and every element of the rejected claims.

The Office Action asserts that *Andreas* "discloses . . . a foot (a tubular element (unlabeled) attached to element 406 and internal to element 426) . . . moveable from within the foot receptacle (426) to a deployed position with the foot extending laterally from the shaft (440) across the distal end portion of the shaft (i.e., a portion of the foot is positioned transverse to the distal end of the shaft as the foot is curved laterally)" (Office Action, pages 2-3). However, claims 1, 9, 15, 23, 28, and 32 have been amended to recite, in part, "the foot being movable from within the foot receptacle to a deployed position at least in part external to the foot receptacle with the foot extending laterally across the distal end portion of the shaft and from the shaft."

Applicant respectfully submits that the "tubular element (unlabeled) attached to element 406 and internal to element 426" is not "moveable from within the foot receptacle to a deployed position at least in part external to the foot receptacle with the foot extending laterally across the distal end portion of the shaft and from the shaft," as recited, in part, by claims 1, 9, 15, 23, 28, and 32. Rather, the unlabeled tubular element does not appear to move from within the needle sheath 426 "to a deployed position at least in part external to the foot receptacle with the foot extending laterally across the distal end portion of the shaft and from the shaft," as recited, in part, by claims 1, 9, 15, 23, 28, and 32. In fact, the unlabeled tubular element and the needle sheath 426 do not appear to change because *Andreas* discloses that "flexible needle sheath 426 [is] attached to the guide tip 406 of guide body 402" (*Andreas*, col. 10, ll. 15-16). Therefore, the unlabeled tubular element and the needle sheath 426 do not move with respect to each other. Thus, *Andreas* does not disclose the devices recited in claims 1, 9, 15, 23, 28, and 32. Consequently, Applicant respectfully requests that the rejection under 35 U.S.C. § 102(e) be withdrawn.

## **II. REJECTION UNDER 35 U.S.C. § 103**

The Office Action rejected claims 38, 40, and 43-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,374,275 (*Bradley*) in view of U.S. Patent No. 6,517,553 (*Klein*). Claims 38, 39, 41, and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,368,601 (*Sauer*) in view of *Klein*. Applicant traverses the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

The Office Action admits, and Applicant agrees, that *Bradley* "do[es] not disclose that the guidebody is flexible and is configured to receive a guidewire" and that *Sauer* "do[es] not disclose a flexible guidebody configured to receive a guidewire that extends from the distal end of the shaft" (Office Action, page 5). However, the Office Action asserts that *Klein* "teach[es] . . . a flexible guidebody (66) configured to receive a guidewire and extending from the distal end of a shaft" which "would have been obvious . . . so that it includes a flexible guidebody configured to receive a guidewire" (*Id.*, page 6). However, claims 38, 41, and 43 have been amended to recite, in part, "the flexible guidebody including a guidewire exit port in a side wall of the flexible guidebody." Applicant respectfully submits that *Klein* does not disclose, teach, or suggest this limitation. Rather, *Klein* discloses that the guidewire exits the guide wire lumen 26 through the proximal end of the substantially straight guidewire lumen 26, not "a guidewire exit port in a side wall of the flexible guidebody," as recited, in part, by claims 38, 41, and 43 (*See Klein*, Fig. 2).

In view of *Klein*'s failure to disclose, teach, or suggest teach "a flexible guidebody including a guidewire exit port in a side wall of the flexible guidebody," as recited, in part, by claims 38, 41, and 43, Applicant submits that the Examiner has failed to set forth a *prima facie* case for obviousness. Consequently, Applicant respectfully requests that the rejection under 35 U.S.C. § 103 be withdrawn.

## **D. CONCLUSION**

In view of the foregoing, and consistent with the tentative agreement reached during the Examiner Interview, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be

appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 23rd day of February, 2008.

Respectfully submitted,

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